

Contract No. \_\_\_\_\_

**INMATE TELEPHONE AND PUBLIC TELEPHONE AGREEMENT**

THIS AGREEMENT is made and entered into by and between The Mountain States Telephone and Telegraph Company, d.b.a. U S WEST COMMUNICATIONS (hereinafter "USMC") and Utah State Government, Division of Telecommunications, its Departments, Agencies and Institutions (hereinafter "Space Provider").

1. **TERM.** Inmate telephone and public telephone service shall commence the 27 day of April, 1981 and shall continue in effect for an initial period of one (1) year and shall be renewable up to three (3) years. This Agreement may be automatically extended or renewed under the same terms and conditions for a period of one (1) additional year and shall be in effect for each year thereafter to a total period not to exceed four (4) years total, unless notified by either party in writing no later than ninety (90) days prior to the termination of this Agreement.

2. **SCOPE OF AGREEMENT.** Space Provider has a location or locations within USMC's telecommunications service area which are or will be available during the term of this Agreement for the placement of inmate telephones or public telephones. This Agreement applies to inmate telephones and public telephones currently installed and to future installations. Contracts now existing between USMC and Space Provider for inmate telephone and public telephone service are superseded by this Agreement. USMC agrees to provide its standard inmate line telephones and enclosures as utilized in the specifications contained in RFP 10631600 90, attached hereto and incorporated herein by this reference. USMC retains the right to determine the type of public telephone provided for public telephone service to allow for credit card capability and for use by the hearing impaired. USMC retains the right to establish rates for inmate and public telephone services.

3. **RESPONSIBILITY OF USMC.** USMC agrees to:

3.1. Install inmate telephones and public telephones, associated equipment, wiring, hardware, and enclosures at locations mutually agreed upon by both parties and test all inmate and public telephones and associated lines.

3.2. Wire runs for inmate telephones will be inside of walls where possible. If wire has to be run on wall surfaces or base boards, it will be enclosed within metallic conduit only.

3.3. Jointly determine with Space Provider the appropriate number and type of inmate telephones and public telephones and enclosures to be installed at each location.

3.4. Service and repair inmate telephones and public telephones and associated equipment provided by USMC, at USMC's expense, except as otherwise agreed upon herein.

3.5. Collect and count revenue from each inmate telephone and public telephone covered by this Agreement.

3.6. Provide alphabetical and classified directories at all public telephone locations.

3.7. Provide training to Space Provider's site electronics personnel on the proper functioning of the USMC system to allow them to readily identify "real" problems and to allow them to instruct both inmates and staff on system features, limitations, etc.

3.8. Provide blockage intercept of incoming calls to all inmate telephones and appropriate testing to ensure incoming calls to inmates does not occur.

3.9. Provide Space Provider with the actual telephone numbers of all inmate telephones and public telephones to allow Space Provider to identify specific telephones and locations for problem reporting, etc.

4. RESPONSIBILITY OF SPACE PROVIDER. Space Provider agrees to:

4.1. Provide adequate space for inmate telephones which is easily accessible to the inmates during the normal operating hours of Space Provider, and provide adequate space for public telephones which is easily accessible to the general public, including wheel chair-bound persons, during the normal operating hours of Space Provider. In the event Space Provider is not the owner of the premises, Space Provider shall, where necessary, obtain permission from the building owner or owner's agent for the placement of USMC's public telephones, and shall be responsible for any fees for use of required riser cable and electric power.

4.2. Maintain the area around the inmate telephones, public telephones and enclosures and ensure safe and ready access by the inmates or public, as appropriate, and USMC.

4.3. Allow USMC access to collect revenues or perform maintenance during the established hours of accessibility jointly agreed to by Space Provider and USMC, except when accessibility must be denied to ensure the safety of USMC service personnel and/or to maintain institutional control.

4.4. Exercise reasonable care to prevent the loss through theft of monies from the collecting device and any damage to the public telephones from any source.

4.5. Space Provider may, at its option, purchase and provide "special" inmate telephones, enclosures and other equipment at their own expense. In the event Space Provider elects to provide "special" inmate telephones and enclosure(s), Space Provider shall be responsible for installation, operation, and maintenance of said "specialty" inmate telephones, enclosures and other equipment.

4.6. Space Provider will designate existing site telephone cable pairs from site demark to telephone locations for USMC dial tone when available.

4.7. Space Provider shall provide approved identification cards to USMC service personnel when required by Space Provider to enter any Space Provider site or facility.

5. **OWNERSHIP.** USMC is and shall remain the owner of the inmate telephones and public telephones, associated equipment, wiring, hardware, and enclosures whether or not physically attached to real estate provided by USMC. Any telephones or supplies including house cable, conduit or terminations, installed by or provided by the Space Provider for "special" inmate telephone installations shall remain the property and responsibility of Space Provider.

6. **ADVERTISING.** USMC shall have the sole and exclusive authority to utilize or lease space on its public telephones and enclosures for the display of information and/or advertising. The content of such information or advertising shall be subject to Space Provider's prior written approval.

7. **INMATE TELEPHONE AND PUBLIC TELEPHONE LOCATIONS.** All locations known at the time of execution of this Agreement are specifically set forth in Schedule A, attached hereto and incorporated herein by this reference. Upon mutual agreement of the parties, locations may be added at any time as need or desire may dictate. Any additions, regardless of date, during the term of this Agreement shall automatically expire on the same date as the expiration or termination date of this Agreement.

8. **COMMISSION.** USMC agrees to pay Space Provider a sixteen (16) percent commission on USMC local and intra-LATA revenue collected from each inmate telephone and public telephone. Payment shall be in the form of commission checks made payable to Space Provider.

9. **REMOVAL OF PUBLIC TELEPHONES.**

9.1. USMC agrees to provide at least one (1) inmate telephone line in all housing areas requested by Space Provider, regardless of anticipated or actual revenue earnings. Regardless of the level of inmate population in housing areas, USMC will provide one (1) telephone line for each inmate telephone installed.

9.2. USMC retains the right to remove any or all public telephones in the event that it is not financially feasible, at USMC's sole discretion, to continue providing public telephones at Space Provider's premises upon thirty (30) days written notice to Space Provider. If USMC removes public telephones under this paragraph, Space Provider shall not be liable for termination charges. Space Provider shall be entitled to receive any commissions earned before the USMC removal and the parties shall be relieved of all future obligations under this Agreement.

10. **TERMINATION LIABILITY.** If inmate telephones and/or public telephones are removed by Space Provider, or this Agreement is terminated for any reasons other than those excused reasons set forth herein, Space Provider shall be liable to USMC for a termination charge. Space Provider shall pay to USMC the difference between the amount of commission paid under the Custom Plan (16%) and the amount of commission that would have been paid under USMC's Standard Plan (10%) and the removal cost for each inmate telephone and public telephone terminated.

11. **INDEMNIFICATION.** It is agreed by and between the parties that it is the responsibility of Space Provider to maintain the area around the inmate telephones and public telephones and to maintain enclosures if provided by Space Provider. Space Provider specifically agrees to defend and indemnify USMC from any claims that may result from Space Provider's failure to properly

to the negligence or willful acts of USMC's employees or agents. USMC agrees to defend and indemnify Space Provider from any claims that result from USMC's failure to properly maintain or service inmate telephones and public telephones, except to the extent that the claim results from the negligence or willful acts of Space Provider's employees or agents.

**12. WARRANTY.** USMC warrants all work will be performed in a workmanlike manner consistent with industry standards and all equipment will be maintained in good working order.

**13. MINIMUM PERFORMANCE STANDARDS.**

**13.1.** Response to service calls on both inmate telephones and public telephones will be provided within two (2) working days following receipt of service call.

**13.2.** USMC will physically check all inmate telephones and public telephones for proper operation and damage once every sixty (60) days and physically check all installed telephones for proper operation during the five (5) working days prior to all major State holidays. These include: New Years Day, Memorial Day, July 4th, July 24th, Labor Day, Thanksgiving Day and Christmas.

**14. LIMITATION OF REMEDY.** The obligation of USMC in the event of a service interruption, not a result of Space Provider's actions to shutdown inmate telephones and limit inmate access to inmate telephones, shall be limited to the use of reasonable diligence under the circumstances for restoration of service.

IN NO EVENT SHALL EITHER PARTY BE LIABLE TO THE OTHER FOR INCIDENTAL, SPECIAL, INDIRECT OR CONSEQUENTIAL DAMAGES, INCLUDING LOST STATION REVENUES, LOSS OF PROFITS OR OTHER COMMERCIAL OR ECONOMIC LOSS ARISING OUT OF THE PERFORMANCE OF THIS AGREEMENT, INCLUDING WITHOUT LIMITATION NEGLIGENCE PERFORMANCE OR FAILURE TO PERFORM, EXCEPT AS SET FORTH UNDER THE TERMINATION LIABILITY PROVISION HEREIN.

**15. NOTICES.** Any notices or other communications to be given under this Agreement shall be sent to the following persons:

UTAH STATE GOVERNMENT  
DIVISION OF TELECOMMUNICATIONS  
State Capitol, Room B-60  
Salt Lake City, Utah 84114  
Attn: Craig Jorgensen

U S WEST COMMUNICATIONS  
1485 West 3100 South  
Salt Lake City, Utah 84119  
Attn: Dana Harrington

Either party may change its address for communications by giving notice in writing.

**16. REGULATORY.** This Agreement is subject to USMC's tariffs, catalogs or price lists, as filed with appropriate state and federal regulatory commissions.

**17. LAWFULNESS OF AGREEMENT.** This Agreement and the parties' actions under this Agreement shall comply with all applicable federal, state, and local laws, rules, regulations, court orders, and governmental agency orders. If a court or a governmental agency with proper jurisdiction determines that this

so terminated but the parties legally, commercially, and practicably can continue this Agreement without the unlawful provision, the remainder of this Agreement shall continue in effect.

18. **DEFAULT.** If either party fails to perform its obligations under this Agreement, including the unauthorized substitution of inmate telephones and public telephones, excessive delays in filling orders, poor workmanship, or failure to perform as outlined in the specifications contained in RFP 10031000 90 attached hereto, failure shall constitute default and, in such event, written notice shall be given to remedy such default. Should the defaulting party fail to remedy such default within ten (10) days from date of such notice, the offended party shall have the right, in addition to all other rights and remedies available at law or in equity, to terminate this Agreement in whole or in part.

#### 19. TERMINATION.

19.1. Space Provider reserves the right to terminate this Agreement when new procedures or policies indicate the Space Provider's interest will be served by implementing the new technologies or adopting state-of-the-art and USMC elects not to provide the new technologies or state-of-the-art acceptable to Space Provider.

19.2. In the event either party elects to terminate this Agreement in whole or in part under any provision of this Agreement, termination shall be effected by delivery of a Notice of Termination by "Certified" mail to the other party specifying the extent to which the Agreement is terminated, the reasons for such termination and the date upon which such termination becomes effective.

19.3. The termination of this Agreement shall not affect the obligations of either party to the other under any then existing vested rights or causes of action which have accrued prior to the effective date of termination.

20. **EXCUSED PERFORMANCE.** Space Provider shall not be subject to Termination Liability if the cause of removal is directly related to the cessation of Space Provider's business operations. Neither party shall be held liable for any delay or failure in performance of any part of this Agreement caused by circumstances beyond the reasonable control of the party affected, including, but not limited to, acts of the elements or natural disasters, strikes, power failures, civil or military emergencies or acts of legislative, judicial or other civil authorities.

21. **NON-DISCRIMINATION.** Both parties agree not to discriminate against any employee or applicant for employment because of race, color, religion, sex, age, national origin, or handicap, and shall during the performance of this Agreement, comply with all applicable Executive Orders and Federal Regulations.

22. **NONWAIVER.** The failure of either party to enforce strict performance of any provision of this Agreement shall not be construed as a waiver of its right to assert or rely upon such provision or any other provision of this Agreement.

23. **GOVERNING LAW.** This Agreement shall be interpreted, construed and enforced in all aspects in accordance with the laws of the State in which the inmate telephone and public telephone service is provided.

24. **SUCCESSORS AND ASSIGNS.** This Agreement shall be fully binding upon, inure to the benefit of and be enforceable by each party and its successors and assigns. No assignment of any right or interest in this Agreement (whether by contract, operation of law or otherwise) shall release or relieve either party of any of its obligations or liabilities under this Agreement.

25. **ASSIGNMENT.** Neither party shall assign its rights nor delegate its duties under this Agreement without the prior written consent of the other party; except, either party may assign this Agreement to a parent, subsidiary or affiliated company by providing thirty (30) days written notice to the other party.

26. **MERGER.** Space Provider acknowledges that the "The Mountain States Telephone and Telegraph Company" name in the introductory paragraph of this Agreement may merge with Northwestern Bell Telephone Company and Pacific Northwest Bell Telephone Company into one corporate entity, and Space Provider consents to such merger and to the associated change in legal entity and name. The resulting entity will automatically become "USM" under this Agreement without further action by either party. The merger will have no affect on the terms and conditions of this Agreement or the duties and obligations of the parties.

## 27. AMENDMENTS AND MODIFICATIONS.

27.1 Amendments, modifications, and supplements to this Agreement are allowed and will be binding upon Space Provider and U S WEST after the effective date, provided:

a. The amendments, modifications, and supplements are in writing, signed by an authorized representative of each party herein; and

b. The amendments, modifications, and supplements, by reference, incorporate this Agreement and identify the specific sections or provisions contained herein, which are amended, modified or supplemented.

27.2 The term "this Agreement" as used herein shall be deemed to include any future amendments, modifications, and supplements made in accordance herewith.

28. **ENTIRE AGREEMENT.** This Agreement, together with all Schedules and supplementary documents incorporated by reference, shall constitute the entire agreement between the parties with respect to the services and facilities to be provided and shall supersede all prior agreements, proposals, understandings, representations, correspondence or communications relating to the subject matter hereof.

APPROVED

STATE OF UTAH

By Craig M. Jorgensen

Name Craig M. Jorgensen

Print/Type

Title ASST. DIR. BUS

Date 5/31/90

By

Name Dore S. Cunningham

Print/Type

Title ACCOUNT EXECUTIVE

Date May 31, 1990



AMENDMENT TWELVE  
TO  
AGREEMENT  
BETWEEN  
U S WEST COMMUNICATIONS  
AND  
UTAH STATE GOVERNMENT

This Amendment modifies the Inmate Telephone and Public Telephone Agreement between The Mountain States Telephone and Telegraph Company, d.b.a. U S WEST Communications, and Utah State Government, dated April 27, 1990 by amending the following provisions:

1. Clause 1, TERM, CHANGE to read:

Inmate telephone and public telephone service shall commence the 27th day of April, 1990, and shall continue in effect for four (4) years. This Agreement may be extended or renewed by mutual written agreement of the parties. In the event this Agreement is neither extended nor renewed, and service continues to be provided to Space Provider, this Agreement shall continue on a month-to-month basis under the same terms and conditions ~~unless terminated by either party upon thirty (30) days written notice~~.

2. Clause 3, RESPONSIBILITY OF USWC, ADD the following paragraphs:

3.10. Additional Equipment.

a. At the Space Provider's request, USWC shall install equipment ancillary to the inmate telephone system ("~~timer~~") to limit the lengths of calls from inmate telephones and provide an audible tone to the inmate before the call is disconnected ("~~timer~~"). To the extent the timer is used in connection with interLATA telecommunications, USWC shall not select or recommend interexchange carriers and shall not design interLATA circuits for its Space Providers.

b. At the Space Provider's request, USWC shall install equipment ancillary to the inmate telephone system to block access to specific telephone numbers identified by Space Provider ("~~call~~ blocking"). USWC shall effect such changes within twenty-four (24) hours of notification, with the exception of requests that occur a) after noon on Friday, b) after noon the day before a holiday or c) on a holiday, in which cases the requested change shall be effected by noon the following business day.

c. At the Space Provider's request, USWC shall install equipment ancillary to the inmate telephone system to provide for ~~continuous multichannel, full-to-peak recording of all~~ inmate-generated calls; calls to attorneys/public defenders may be excluded ("recording").

d. At the Space Provider's request, USWC shall install equipment ancillary to the inmate telephone system to provide for the facility to monitor any telephone conversation made from an inmate telephone ("monitoring").

3. Clause 4, RESPONSIBILITY OF SPACE PROVIDER, ADD the following paragraph:

4.8. ~~Space Provider~~ shall be responsible for informing their selected Interexchange Carrier in writing that InterLata calls may be subject to "call timing," "call blocking" and, "monitoring and recording" at Space Provider's sole request and direction, and for providing a copy of said notice to USWC.

4. Clause 10, TERMINATION LIABILITY, CHANGE to read:

If inmate telephones and/or public telephones are removed by ~~Space Provider~~, or this Agreement is terminated for any reasons other than those assumed reasons set forth herein, Space Provider shall be liable to USWC for a termination charge as set forth in Schedule B, attached hereto and incorporated herein by this reference.

5. Clause 11, ADD the following paragraph:

11.2. ~~Space Provider~~ also agrees to defend and indemnify USWC from any loss, personal injury or damage, and from all claims, demands or liability whatsoever arising out of or in any way connected with the Space Provider's requirement under this Agreement that USWC provide call timing, call blocking and, monitoring and recording equipment for the Space Provider's facilities as set forth in Schedule C herein.

6. Clause 20, EXCUSED PERFORMANCE, ADD the following paragraph:

20.2. USWC shall not be in default of this Agreement should the appropriate governmental agencies not approve of any or all of the additional equipment provided for herein by USWC; however, ~~Space Provider may terminate this Agreement, and Space Provider shall be liable for termination charges.~~ Space Provider shall be entitled to receive any commissions earned before the termination date and the parties shall be relieved of all future obligations under this Agreement.



All other terms and conditions of this Agreement shall remain in full force and effect. The effective date of this Amendment Twelve shall be the date of last signature shown below.

**STATE OF UTAH**

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Name Printed/Typed

\_\_\_\_\_  
Title

\_\_\_\_\_  
Date

**U S WEST COMMUNICATIONS**

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Dale Charrington

\_\_\_\_\_  
Name Printed/Typed

\_\_\_\_\_  
Account Executive

\_\_\_\_\_  
Title

\_\_\_\_\_  
Date

**SCHEDULE B**  
**TERMINATION LIABILITY**  
**FOR**  
**STATE OF UTAH**

1. The termination charge shall be \$318.35 for each inmate telephone, reduced by \$6.63 for each month the inmate telephone is in service after the installation date plus the cost of the ancillary equipment.

**TELEPHONE INVESTMENT:**

Net Unamortised Capital: Charge-a-Call Telephones	\$ 173.69/MT
Installation Cost:	\$ 144.76/MT
Removal Cost:	\$ 0.00/MT
	\$ 318.35/MT

2. The termination charge shall also include the cost of the ancillary equipment, reduced by \$5697.92 for each month the ancillary equipment is in service after the installation date.

**ANCILLARY EQUIPMENT INVESTMENT:**

Equipment for Recording & Monitoring	\$200,000.00
Equipment for Timing and Blocking	\$ 73,800.00

3. The termination charge shall also include the difference between the amount of commission paid under this Agreement and the amount of commission that would have been paid under Contractor's Standard Commission Plan for each inmate telephone terminated.

**COMMISSION:**

Prime Commission	16%
Standard Commission	10%
Commission Difference	6%

4. In addition, if one or more inmate telephones are removed by DOC other than for those excused reasons provided herein, or are removed by DOC and replaced by another provider of inmate telephones, leaving one or more inmate telephones in place, Contractor may change DOC's commission from 16% to 10%.